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NOV 25 1991  
November 22, 1991

EXAMINERS

**RECEIVED**

**NOV 22 1991**

Federal Communications Commission  
Office of the Secretary

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

**Re: File No. BPH-910708ME  
South Waverly, PA**

Dear Ms. Searcy:

Transmitted herewith, on behalf of Shirley A. Penrod, applicant in the above-referenced proceeding are an original and four (4) copies of her Motion to Strike.

Should questions arise with respect to this matter, kindly communicate with the undersigned.

Very truly yours,



Robert L. Olender  
Counsel for  
**SHIRLEY A. PENROD**

RLO:bpt  
Enclosures  
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NOV 22 1991

Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

Federal Communications Commission  
Office of the Secretary

In re Application of

SHIRLEY A. PENROD  
South Waverly, Pennsylvania

WILLIAM F. O'SHAUGHNESSY  
South Waverly, Pennsylvania

Application for a New FM  
Station on Channel 241A

File No. BPH-910708ME

File No. BPH-910703MK

To: The Commission

**MOTION TO STRIKE**

Shirley A. Penrod ("Penrod"), through counsel, herein moves to strike page four and Attachment 1 of the Reply to Opposition to Petition to Deny<sup>1</sup> filed by William F. O'Shaughnessy ("O'Shaughnessy"). In support thereof, the following is shown:<sup>2</sup>

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<sup>1</sup>O'Shaughnessy in his Reply does not address the claim that his petition to deny is procedurally defective as being a disguised petition to enlarge issues which is untimely filed. His reply only exacerbates that deficiency.

<sup>2</sup>Penrod's Opposition was filed pursuant to her request for an extension of time. Undersigned counsel on November 6, contacted Mr. Krause to advise him of the fact that an extension of time was being sought due to his mis-directing the Petition to counsel's old address which resulted in a substantial delay in receiving the Petition. Mr. Krause was not available at the time and undersigned counsel spoke with his secretary explaining that an extension was going to be filed that date and indicating to her that unless he was advised by Mr. Krause that he was going to oppose this request by the end of the day, that he would be reciting Mr. Krause's consent. Mr. Krause's secretary indicated that she would inform Mr. Krause of this procedure. Having not heard from Mr. Krause by the end of the day, a pleading was filed reciting that Mr. Krause had consented to Penrod's request. Had Mr. Krause or his secretary given undersigned counsel the courtesy of responding to his call and indicating that an objection was going to be filed, this recitation would not have been included.

O'Shaughnessy in his reply submits an untimely statement of Norman Stull, a disgruntled ex-employee of Stations WELM (AM) and WLVI(FM), Elmira, New York. This statement obviously is biased, since it's being made by an ex-employee of Mr. Pfuntner who was fired for cause from his job.<sup>3</sup> However, aside from the tainted nature of this statement, it has absolutely no relevancy to the instant proceeding involving an application by Penrod for South Waverly, Pennsylvania. Mr. Stull's statement refers to an alleged meeting occurring sometime in 1989 pertaining to an application for Southport, New York, not for South Waverly, Pennsylvania.<sup>4</sup>

This matter has no bearing on this proceeding and consequently the statements and arguments contained in O'Shaughnessy's reply should be stricken as totally irrelevant to this proceeding.<sup>5</sup>

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<sup>3</sup>If it is true, it also is an admission by Mr. Stull that he was willing to deceive the FCC by fronting an application in Southport, New York. Thus, the FCC can hardly be expected to rely upon Stull for his truthfulness. One wonders whether his motive to come forward now is contrition or malice. The filing of his declaration after his termination suggests the latter.

<sup>4</sup>O'Shaughnessy has attempted to draw a non-related party, Ms. Nicastro, into this proceeding by raising matters that would allegedly only have merit in the Southport proceeding. The Commission should not allow this tactic of requiring Penrod to elicit testimony from Ms. Nicastro, who is totally uninvolved with this proceeding, to respond to allegations pertaining to the Southport proceeding which is not at issue and has concluded with a final decision. It creates a web of entanglement which O'Shaughnessy knows is cumbersome administratively and Penrod will not further Mr. Stull's ill-conceived motives by requesting Ms. Nicastro to rebut these charges.

<sup>5</sup>The FCC should admonish O'Shaughnessy not to engage in further witch hunting of disgruntled ex-employees as his means of undermining the sincerity of Penrod's application. Such a undertaking only wastes the resources and time of the Commission and demonstrates the depth of O'Shaughnessy's desperation in attempting to create something out of nothing.

ACCORDINGLY, this statement and reference to it on page 4 of the Reply should be STRICKEN as without merit and totally irrelevant.

Respectfully submitted,

SHIRLEY A. PENROD

By:



Robert L. Olender  
Her Attorney

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& HOCHBERG, P.C.  
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November 22, 1991

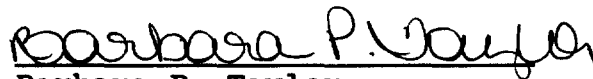
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**CERTIFICATE OF SERVICE**

I, Barbara P. Taylor, a secretary in the law firm of Baraff, Koerner, Olender & Hochberg, P.C., certify that on this 22nd day of November, 1991, copies of the foregoing document were sent via first class U.S. mail, postage prepaid to the following:

Dennis Williams, Esq.\*  
Federal Communications Commission  
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Barbara P. Taylor

\*Via Hand Delivery  
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